

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

August 13, 2013 at 2:00 p.m.

1. [13-27903](#)-C-13 ELIZABETH KIMMONS MOTION TO VALUE COLLATERAL OF
 SAC-2 Scott A. CoBen GMAC MORTGAGE
 Thru #2 7-25-13 [[23](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 25, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2815 Tam O Shanter Drive, El Dorado Hills, California. The Debtor seeks to value the property at a fair market value of \$351,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$417,000. GMAC Mortgage's second deed of trust secures a loan with a balance of approximately \$73,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer*

August 13, 2013 at 2:00 p.m.

v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of GMAC Mortgage secured by a second deed of trust recorded against the real property commonly known as 2815 Tam O Shanter Drive, El Dorado Hills, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$351,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 18, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is continue the hearing on the Objection to Plan Confirmation to 3:00 p.m. on September 24, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor has failed to file a Motion to Value Green Tree on a second deed of trust. Without this motion they will be unable to make the payments under the plan. Furthermore, the plan relies on the Motion to Value Collateral of Zig Zag Bail Bonds.

The Debtor filed an opposition to the Chapter 13 Trustee's Objection to Confirmation. In their response Debtor alleges that the reason they have not filed a Motion to Value for Green Tree is because that motion was denied by the court on the basis that Green Tree, as a servicer, is not the proper creditor to be valued. Counsel for Debtor issued a subpoena to Green Tree requesting documentation to determine who the actual creditor is. Green Tree ignored the subpoena. Green Tree's law firm has provided no assistance. Counsel for Debtor will be filing a motion seeking an order compelling Green Tree to comply with the subpoena.

The Court's decision is to continue the hearing on the Objection to Confirmation until September 24, 2013 at 3:00 p.m. to give Debtor the opportunity to diligently prosecute her motion seeking an order compelling Green Tree to comply with the subpoena.

The court shall issue a minute order substantially in the following form holding that:

IT IS ORDERED that the hearing on the Objection to Plan Confirmation is continued until 3:00 p.m. on September 24, 2013.

3. [13-26112](#)-C-13 ROBERT/CATHERINE WONG MOTION TO CONFIRM PLAN
 MAC-4 Marc A. Carpenter 6-27-13 [[34](#)]

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee, having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Trustee objects to confirmation of Debtor's plan on the following grounds: (1.) Debtors have not filed all required tax returns pursuant to 11 U.S.C. § 1325(a) (9). (2.) Trustee is not certain Debtors will be able to make payments or comply with the plan. The original plan called for payments of \$4,644.52 for 60 months with 30% or more to unsecured creditors; the First Amended Plan calls for \$3,106.03 for 60 months with 85% or more to unsecured creditors. The amended plan calls for the secured claim of Bayview Servicing (servicing agent for M&T Bank) to be paid as Class 4 in the amount of \$1,156.85, while the original plan called for M&T Bank to be paid as Class 1 in the amount of \$1,689.00 plus \$500.00 per month for arrearages. The plan payment has been reduced \$1,538.49 from the original plan payment. (3.) Debtors' income is approximately \$400 more per month than listed on the most recent Schedule I. Debtors' amended Schedule I, filed on June 27, 2013, lists retirement income as \$8,162.71 per month; however, the CalPers statement for Debtor Mr. Wong, dated May 1, 2013, shows a total gross income of \$8,325.91 per month. Furthermore, unemployment income listed on the Schedule amounts to \$706.74, while the original Schedule I lists

unemployment income at \$944.67 per month. (4.) Debtors appear to be deducting property taxes twice, first as part of the mortgage payment and second as part of Line 12 taxes referencing a "detailed expense attachment." The attachment is missing from the amended Schedule J but was attached to the original and it included \$200.00 of property taxes at that time.

(5.) Debtors list net income on their most recent Schedule J as \$3,375.86; however, their plan payment is \$3,106.03. Debtors may be underestimating tax liability because there is a \$405.66 discrepancy between the tax expenses listed on the detailed statement (missing here) and Mr. Wong's paystub tax expense. IRS claim reflects that a tax was assessed and is due for \$9,453.92, while Debtors' Federal 2011 Tax Return reflects a refund of \$9,311.00.

Trustee further argues for denial of the plan because a review of Schedules D and F indicated that total unsecured debt is \$141,535.75 and not \$87,945.54, as claimed by Debtors. Based on the Trustee's calculation, the plan will pay 58% of unsecured debts in 60 months, and not the 85% proposed.

The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

4. [11-37913](#)-C-13 KEITH/PATRICIA PAULSEN MOTION FOR COMPENSATION FOR
DRG-1 Eric John Schwab DAVID GRAVELL, CHAPTER 7
TRUSTEE, FEES: \$4,075.00,
EXPENSES: \$0.00
7-13-13 [[132](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, all creditors, Chapter 13 Trustee, and Office of the United States Trustee on July 13, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Application for Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and FRCP 2002(a)(6). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The motion for compensation is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

FEES REQUESTED

David Gravel, the former Chapter 7 Trustee in Case No.: 2011-37913, makes a Request for the Allowance of Fees and Expenses in this case pursuant to 11 U.S.C. § 330. The period for which the fees are requested is July 21, 2011 through December 11, 2012.

Description of Services for Which Fees are Requested

Counsel stated that he incurred fees and expenses in the amount of \$4,075.00 for work performed prior to Chapter 13 conversion. Trustee asserts that his efforts resulted in the discovery of the most significant asset of value to the estate, litigation claims against the Joint Debtors' former employer. Debtors converted their case after value on the claim came to light and following the Trustee noticing a sale motion to realize that value. Trustee was removed upon appointment of the Chapter 13 Trustee.

The Chapter 13 Trustee has filed a non opposition to Mr. Gravel's Motion.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by David Gravell having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that David Gravell is allowed the following fees and expenses as a professional of the Estate:

David Gravell, Counsel for the Estate
Applicant's Fees Allowed in the amount of \$4,075.00
Applicant's Expenses Allowed in the amount of \$0.00,

which amount may be paid Counsel by the Chapter 13 Trustee from unencumbered assets, after full credit applied for any retainers or prior amounts paid to Counsel.

5.	13-29216 -C-13	ROBERT FINE	MOTION TO EXTEND DEADLINE TO
	DEF-1	David Foyil	FILE SCHEDULES OR PROVIDE
			REQUIRED INFORMATION
			7-25-13 [9]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and the Office of the United States Trustee on July 25, 2013. 14 days' notice was required. That requirement was met.

Tentative Ruling: The Motion to Extend Deadline to File Schedules or Provide Required Information was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the U.S. Trustee and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Extend Deadline to File Schedules or Provide Required Information. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion seeks an extension of the 14-day deadline established by Fed. R. Bankr. P. 1007(c), so as to allow Debtor to file the required documents by August 14, 2013, even though the case was filed on July 11, 2013. Debtor requests a twenty (20) day extension, until August 14, 2013, to prepare and

file her schedules, statement of affairs, payment advices, statement of current monthly income, and means test calculation pursuant to FRBP 1007(c). Debtor states she requires the additional time to gather the documents and acquire necessary information from creditors.

Fed. R. of Bankr. P. 1007(c) permits extension of time for the filing of the lists required by subdivision FRBP 1007(b) upon a showing of cause and on notice to the US Trustee. FRBP 1007(a)(5) & (c). Here, Debtor requests a twenty (20) day extension to prepare and file her schedules, statement of affairs, payment advices, statement of current monthly income, and means test calculation pursuant to FRBP 1007(c). Debtor states she requires the additional time to gather the documents and acquire necessary information from creditors. Debtor provided sufficient timely notice to the Office of the US Trustee.

With no opposition suggesting a contrary finding, Debtor has demonstrated sufficient cause to extend the deadline to file schedules, statement of affairs, payment advices, statement of current monthly income, and means test calculation to August 14, 2013. Nothing indicates this extension is required as a result of Debtor's bad faith or that it will result in prejudice to any other parties in interest.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend Deadline to File Schedules or Provide Required Information filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Extend Deadline to File Schedules or Provide Required Information is granted.

Local Rule 9014-1(f)(2) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 18, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because: (1.) The Debtor failed to provide the Trustee with a copy the Federal Income Tax Return for the most recent pre-petition tax year as required under 11 U.S.C. § 521(e)(2)(A). (2.) The Debtor failed to provide the Trustee with 60 days of employer advices received prior to the filing of the petition as required under 11 U.S.C. § 521(a)(1)(B)(iv). (3.) The Debtor is \$501.00 delinquent in plan payments to the Trustee, as of the filing date of this objection. The case was filed on May 9, 2013 and under the plan the Debtor is to make payments to the Trustee not later than the 25th day of each month. The Debtor has paid \$0 into the plan as of the date the objection was filed. (4.) The Debtor failed to file a Spousal Waiver for use of California State Exemptions under California Code of Civil Procedure § 703.140. The Trustee's Objection to Exemptions is set for hearing on August 20, 2013. The Debtor had claims \$3,150 of property as exempt and, if the exemption is lost, must pay at least that amount to unsecured claims. The plan proposes no less than 0%. (5.) The plan will not be complete within 60 months as required under 11 U.S.C. § 1322(d) because the plan payment of \$501.00 is insufficient to meet the Debtor's plan obligations. (6.) The properly adjusted net income on the Debtor's Schedule J is \$1,983 per month. This amount renders the plan incapable of providing sufficient payments to the Trustee for the Trustee to be able to pay the ongoing mortgage payment of \$1,479.00.

The **Debtor filed a response** to the Trustee's Objection alleging the following: (1.) The Debtor suffered a house fire that destroyed all of her paperwork and personal belongings. The Debtor has submitted a request for a

transcript of her 2011 Tax Return and has attached her 2012 Tax Return as Ex. A to her Response. (2.) The Debtor is a self-employed candy maker, grossing \$83.00 per month, and does not receive pay advances. The Debtor's non-filing spouse pay advances are attached as Ex. B. (3.) The Debtor will cure delinquent plan payments by sending the Trustee a money order in the amount of \$1,002.00 on August 1, 2013. (4.) On July 30, 2013, the Debtor filed with the Court the Spousal Waiver for use of the California State Exemptions. It is attached as Ex. C. (5.) On July 30, 2013, the Debtor filed a feasible, amended plan with plan payments of \$2,030.00 per month. The amended plan is attached as Ex. D. (6.) On July 20, 2013, the Debtor filed an amended Schedule J demonstrating that Debtor has surplus income and is able to make the monthly plan payment to the Trustee.

In light of the fact that the Debtor has filed an amended plan, this objection, which was filed in response to a previous version of the Debtor's plan, is rendered moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled as moot.

7. [13-27124](#)-C-13 SAMMY LATINO OBJECTION TO CONFIRMATION OF
TSB-1 Pro Se PLAN BY DAVID P. CUSICK
7-18-13 [[38](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on August 6, 2013, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

8. [13-26028](#)-C-13 TRACY/REGINA WINDSOR MOTION FOR COMPENSATION BY THE
CA-1 Michael David Croddy LAW OFFICE OF CRODDY &
ASSOCIATES, P.C. FOR MICHAEL
DAVID CRODDY, DEBTOR'S
ATTORNEY(S), FEE: \$1,925.08,
EXPENSES: \$0.00.
7-21-13 [[18](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Application for Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the motion for compensation. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

FEES REQUESTED

Michael D. Croddy, Counsel for Debtor, makes a Request for the Allowance of Additional Fees and Expenses in this case. The period for which the fees are requested is March 28, 2013 through May 30, 2013.

Description of Services for Which Fees are Requested

Counsel stated that he incurred fees and expenses in the amount of \$3,801.08 for work performed pre-Chapter 13 confirmation and that fees previously allowed are not sufficient to fully compensate him for services rendered. Counsel is requesting the Court allow fees and costs of \$3,801.06 for services and that \$1,925.08 (\$3,801.08 minus \$1,631.00 previously received and minus a \$245.00 professional discount) be paid through the Chapter 13 Plan to the extent available and directly by Debtors to the extent not available through the Chapter 13 Plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Michael Croddy having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael Croddy is allowed the following fees and expenses as a professional of the Estate:

Michael Croddy, Counsel for the Estate
Applicant's Fees Allowed in the amount of \$3,400
Applicant's Expenses Allowed in the amount of \$401.08,

which amount may be paid Counsel by the Chapter 13 Trustee from unencumbered assets, after full credit applied for any retainers or prior amounts paid to Counsel.

9. [13-26730](#)-C-13 TRINIDAD FREYRE
JTK-2 Richard A. Hall
Thru #10

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
7-10-13 [[56](#)]

Motion to Dismiss Case filed by Debtor on 7/31/2013 Item #10.

Local Rule 9014-1(f)(1) Motion - Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and the Office of the United States Trustee on July 10, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Convert was set on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition and the Movant filed a Response. The court will take up the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Convert. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1307 permits the court, upon motion by a party in interest, to convert a Chapter 13 case to a Chapter 7 case for cause. Creditor Spartan Mortgage Services, Inc. presents three arguments demonstrating the cause required to convert.

(1.) Creditor argues sufficient cause exists because Debtor has secured debt in the amount of \$1,270,875.93, an amount in excess of the allowable maximum for a Chapter 13 debtor of \$1,081,400, rendering Debtor ineligible for Chapter 13 relief.

(2.) Creditor argues that under 11 U.S.C. § 1307(c)(1) Debtor's delay is unreasonable and prejudiced Creditor. Specifically, Creditor states that Debtor's loan was initially made on October 2, 2006 and came due on June 1, 2008. The loan was extended twice and under the Forbearance Agreement, the principal amount of the Note, \$910,000.00, came due on January 10, 2013. Beneficiaries of the Trust Deed were compelled to advance funds in the amount of \$67,861.53 to pay real property taxes and protect their interests against loss by tax sale. Finally, Debtor has not provided Creditor with proof of fire/hazard insurance protecting the property against casualty loss. Creditor asserts these actions demonstrate unreasonable delay and prejudice.

(3.) Creditor argues under 11 U.S.C. § 1307(c)(5) that Debtor's three previous failed attempts to confirm a Chapter 13 plan in a 2012 case (dismissed, Case No. 2012-41092. B.A.P. dismissed appeal for lack of prosecution on June 11, 2013) justifies conversion to Chapter 7 in this case.

(4.) Creditor believes confirmation of a Plan is highly unlikely based on Debtor's inability to confirm a plan after three attempts in the previous case and because Debtor is relying on a financial "Angel" to help her make payments.

Creditor additionally states that conversion is preferable to dismissal because the Debtor may simply refile another case in bad faith.

Debtor's Opposition

Debtor filed an **Opposition** to Creditor's Motion, arguing the case should not be converted on the following grounds:

(1.) Creditor is not a party in interest because on July 2, 2013, it was granted relief from the automatic stay in order to complete a non-judicial foreclosure pursuant to a Notice of Trustee's Sale recorded in December 2012. Debtor argues that under Cal. Civ. Code § 580, Creditor is prevented from asserting a deficiency claim upon completion of foreclosure because the property is a single family dwelling and primary residence of Debtor. Therefore, according to Debtor, Creditor is ineligible to recover assets in a Chapter 7 proceeding and is not a party in interest.

(2.) Debtor argues conversion to Chapter 7 is not in the best interests of creditors because the only asset of Debtor not exempt is State Court litigation filed in Sacramento County Superior Court on July 18, 2013. The State Court litigation alleges numerous statutory violations rendering as void the Promissory Note and Trust Deed for the property at issue (9055 Quail Cove Drive, Elk Grove, CA 95624). On July 18, 2013, the Superior Court granted Debtor's request for a Temporary Restraining Order enjoining Creditor from proceeding with foreclosure action.

(3.) Debtor argues that Creditor's characterization of Declarant Kerrie Lee Bieber's declaration as "undisputed facts" is disingenuous because Debtor was not given an opportunity to challenge the veracity of the declaration.

(4.) Debtor argues that Creditor's assertion that Debtor will refile is conjecture. Debtor states it has no intention to refile a case under any Chapter of the Bankruptcy Code and Creditor's speculation is an effort to gain a tactical advantage in the State Court litigation.

Creditor's Response

Creditor filed a **Response** to Debtor's Opposition, arguing the following:

(1.) Creditor argues it is a party in interest in the instant matter and has standing to move to convert Debtor's case. Creditor cites *In re Cowan* to support its position, in which the court held the term "party in interest" is flexible and is defined based on the factual context in which it is applied. 235 B.R. 912, 915 (Bankr. W.D.Mo. 1999) (citing *In re River Bend-Oxford Associates*, 114 B.R. 111, 113 (Bankr. D. Md. 1990)), cited with approval by *In re Sobczak* 360 B.R. 512, 517-18 (9th Cir. BAP 2007). In this context, Creditor argues it is a party in interest because Debtor's schedules identify Creditor as a bona fide creditor and in the course of Debtor's Chapter 13 cases, she has attempted to modify the rights of Creditor as the holder of the Note and Trust Deed of the relevant property.

(2.) Creditor continues to argue Debtor acted in bad faith in filing both Chapter 13 cases. Creditor reiterates that Debtor was unable to confirm a plan in the 2012 case and that the Chapter 13 Trustee was successful in having that case dismissed. Creditor notes that Debtor's appeal of the dismissal was dismissed by the BAP for lack of prosecution and that ten days after filing the appeal for dismissal of the 2012 case, Debtor filed the 2013 case and sought continuation of the automatic stay, which was denied by the Court. The court subsequently denied plan confirmation based on the Chapter 13 Trustee's objection and Debtor then filed an opposition to Creditor's Motion to Convert and then moved to Dismiss her case. Creditor states Debtor's bad faith actions are supported by the Declaration of Mr. Hall.

(3.) Creditor responds to Debtor's allegation that the Declaration of Kerrie Bieber is not "undisputed." Specifically, Creditor notes that the Declaration was filed on May 23, 2013 in support of Creditor's motion for relief from stay and that in the Court's minutes granting relief (Doc. 50), the

Court states that debtor made "no opposition or showing" in response to the motion. Furthermore, Creditor states that Mr. Hall appeared by telephone and stipulated to the relief sought. Creditor argues that Debtor received notice and had the opportunity to be heard. Therefore, Creditor argues the evidence was undisputed and the Court should take judicial notice of it as requested in Creditors Request for Judicial Notice (Doc. 58).

Creditor's Request for the Court to Take Judicial Notice

Creditor requests for the court to take Judicial Notice, pursuant to Federal Rule of Evidence 201, of the Declaration of Kerie Lee Bieber that was filed in support of Creditor's Motion for Relief from the Automatic Stay.

Discussion

Under 11 U.S.C. § 1307(c) the court may, upon the request of a party in interest and after notice and a hearing, convert a case under Chapter 13 to Chapter 7 for cause.

Creditor argues under 11 U.S.C. § 1307(c)(1) that Debtor's actions amounted to unreasonable delay that was prejudicial to creditors. Creditor's argument is not persuasive because Debtor's actions, which included non-payment of a debt and failure to pay under a Forbearance agreement, are consistent with the actions of many Debtors and not sufficiently unreasonable to amount to "cause."

Creditor argues under 11 U.S.C. § 1307(c)(5) that denial of Debtor's previous Chapter 13 plan in Debtor's 2012 case is sufficient reason to force conversion now. However, Debtor's previous plan denial does not operate to support a motion to convert in Debtor's current case. Furthermore, 11 U.S.C. § 1307(c)(5) additionally requires that Debtor have been denied a request for additional time for filing another plan. Creditor makes no mention of the second requirement.

Creditor has failed to present sufficient cause under 11 U.S.C. § 1307(c) to convert Debtor's case. Furthermore, Debtor filed a Motion to Dismiss the case under 11 U.S.C. § 1307(b), which the court is granting. Thus, the Court is denying Creditor's Motion.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by Spartan Mortgage Services, Inc. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is denied.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, interested creditor, and Office of the United States Trustee on July 30, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor's arguments to dismiss the case are similar to its arguments in its Opposition to Spartan Mortgage, Inc.'s Motion to Convert Debtor's case to Chapter 7. Therefore, Debtor's argument does not focus solely on why dismissal is proper, but also why conversion to Chapter 7 is not best.

Debtor seeks to dismiss this case pursuant to 11 U.S.C. § 1307(b) under which the court shall dismiss a case under Chapter 13 upon request of the debtor at any time, so long as the case has not been converted prior to the request. Debtor asserts its statutory right to dismiss exists because the case has not previously been converted.

Debtor also argues the dismissal is in the best interest of its creditors because no benefit will accrue to creditors in a liquidation proceeding. Debtor argues that the only estate asset with value that is not exempt is State Court litigation filed in Sacramento County Superior Court on July 18, 2013. The State Court litigation alleges numerous statutory violations rendering as void the Promissory Note and Trust Deed for the property at issue (9055 Quail Cove Drive, Elk Grove, CA 95624) in favor of Secured Creditor Spartan Mortgage Services, Inc. On July 18, 2013, the Superior Court granted Debtor's request for a Temporary Restraining Order enjoining Spartan from proceeding with foreclosure action granted to it after relief from stay was entered.

Finally, Debtor argues that conversion to Chapter 7 is not in the best interests of the creditors because the Chapter 7 Trustee may decide to pursue the claim in Superior Court, requiring him to hire and fund an attorney to handle the matter. Furthermore, Debtor cites the potential for a five-year delay in the conclusion of the state court matter.

Debtor notes that if the case were dismissed, unsecured creditors would have the opportunity to perfect interests in any State Court award.

Under 11 U.S.C. § 1307(b), on request of the debtor at any time, if the case has not been converted under section 706, 112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under 1307(b) is unenforceable. Here, because Debtor has not previously converted the Chapter 13 case, the right to dismiss is retained and should be granted in accordance with 11 U.S.C. § 1307(b).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by TRINIDAD FREYRE having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

11. [13-27531](#)-C-13 LEONARDO/VALERIE CHAVEZ MOTION TO VALUE COLLATERAL OF
RAC-1 Richard A. Chan REAL TIME RESOLUTIONS
7-3-13 [[16](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 5, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3577 Binghamton Drive,

Sacramento, California. The Debtor seeks to value the property at a fair market value of \$165,250 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$185,384. Real Time Resolutions' second deed of trust secures a loan with a balance of approximately \$87,990. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Real Time Resolutions' secured by a second deed of trust recorded against the real property commonly known as 3577 Binghamton Drive, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$165,250 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Set Aside has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Set Aside. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor's Chapter 13 case was dismissed on July 12, 2013 for failure to timely file documents. Debtor's Counsel attempted to file the documents in time; however, they were filed under Debtor's old case number through fault of Counsel. Debtor now seeks that the case be reinstated.

The Court may provide relief from a final judgment for one of five delineated reasons or for any reason that justifies relief under FRBP 9024(b). Any motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment. FRBP 9023.

The Court's power to set aside Debtor's dismissal derives from 11 U.S.C. § 105, under which the Court has broad authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. However, all motions are limited by Local Bankr. R. 9014-1(d)(5), that requires each motion to cite the legal authority relied upon by the filing party.

Here, Debtor met the filing requirement by filing the Motion ten (10) days after entry of the dismissal; however, Debtor failed to assert any reason that justifies relief. Furthermore, Debtor's Motion failed to cite any legal authority upon which the Court may rely. Therefore, because the Motion does not comply with FRBP 9024(b) or Local Rule 9014-1(d)(5), the Motion should be denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by KHALID KHAN having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Set Aside is denied without prejudice.

13.	<u>11-39934</u> -C-13	KELLY/LISA WINCKLER	MOTION FOR COMPENSATION FOR
	SDH-4	Scott D. Hughes	SCOTT D. HUGHES, DEBTORS'
			ATTORNEY(S), FEES: \$1,925.00,
			EXPENSES: \$40.60
			7-1-13 [<u>62</u>]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Chapter 13 Trustee, and the Office of the United States Trustee on July 1, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Compensation was set on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee filed opposition. The court will take up the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant Motion for Compensation limited to \$1,925.00 for fees and \$40.60 for expenses. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

FEES REQUESTED

Scott Hughes, Counsel for Debtor, makes a Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is August 16, 2011 through July 2, 2013

Description of Services for Which Fees are Requested

Counsel is requesting approval of \$1,925.00 in fees and \$40.60 in expenses. Counsel basis his request upon efforts that produced a tangible benefit to

Debtors and their estate. These efforts include communicating with Debtors regarding their rights concerning creditors, tax collectors, the US Trustee, and the Chapter 13 Trustee; preparing the petition, schedules, and statements; preparing three (3) Chapter 13 plans; attending the meeting of creditors; reviewing claims filed; preparing and filing a motion to value; and working with creditors to maximize interests of Debtors.

The Chapter 13 Trustee filed an **Opposition**, making clear an inconsistency in Counsel's Motion. Specifically, the Chapter 13 Trustee pointed out that Counsel's Motion initially seeks \$1,975.00 in fees and \$40.60 in expenses, but Counsel's prayer for relief seeks \$1,925.00 in fees and \$40.60 in expenses. Furthermore, based on Counsel's attached exhibit, \$1,925.00 is the appropriate additional fee figure. The Chapter 13 Trustee requesting granting of the Motion for an amount not more than \$1,925.00 in fees and \$40.60 in expenses.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Michael Croddy having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Scott Hughes is allowed the following fees and expenses as a professional of the Estate:

Scott Hughes, Counsel for the Estate
Applicant's Fees Allowed in the amount of \$1,925.00
Applicant's Expenses Allowed in the amount of \$40.60,

which amount may be paid Counsel by the Chapter 13 Trustee from unencumbered assets, after full credit applied for any retainers or prior amounts paid to Counsel.

14. [13-27745](#)-C-13 MICHAEL/SUSAN FOURNIER MOTION TO VALUE COLLATERAL OF
SJS-1 Scott J. Sagaria SCHOOLS FINANCIAL CREDIT UNION
Thru #16 7-11-13 [[29](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 11, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is denied as moot. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2008 Gulfstream Mako Blue Water 5th Wheel. The Debtor seeks to value the property at a replacement value of \$24,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in August 2008, more than 910 days prior to filing of the petition, with a balance of approximately \$36,690. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$24,000.00. *See* 11 U.S.C. § 506(a).

Creditor's Response

Creditor filed a Reply to Debtor's Motion to Value submitting that the Motion is moot because on July 24, 2013 the Court entered its Civil Minutes Order granting Creditor's Motion for Relief from Stay as to the Estate.

By granting Schools Financial Credit Union's Motion for Relief from Stay the Court has permitted it to exercise its non-bankruptcy remedies based upon its secured interest in Debtors' property. A Motion to Value is, therefore, rendered unnecessary.

The valuation motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot.

15.	<u>13-27745</u> -C-13 SJS-2	MICHAEL/SUSAN FOURNIER Scott J. Sagaria	MOTION TO VALUE COLLATERAL OF KEYBANK, N.A. 7-11-13 [33]
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 11, 2013. 28 days' notice is required. That requirement was met. However, KeyBank, N.A., the respondent creditor, is an FDIC-insured institution, and was not served via certified mail as required under Federal Rule of Bankruptcy Procedure 7004(h).

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is that the hearing on the Motion to Value Collateral is continued to allow for proper service. No appearance required.

The respondent creditor was not served via certified mail in accordance with Federal Rule of Bankruptcy Procedure 7004(h). Accordingly, the motion is continued until [date] to allow for proper service to be made and an amended proof of service to be uploaded to the court's docket.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is continued to [date].

16. [13-27745](#)-C-13 MICHAEL/SUSAN FOURNIER OBJECTION TO CONFIRMATION OF
TSB-1 Scott J. Sagaria PLAN BY DAVID P. CUSICK
7-18-13 [[39](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 18, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons: (1.) The plan relies on pending motions to value. (2.) The plan fails to provide for a secured debt owed to Citibank on a judgment lien in the amount of \$5,229.26. To date, no motion to avoid this lien has been granted by this court.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

17. [13-20748](#)-C-13 LOREN/AURORWALLIN MOTION FOR COMPENSATION BY THE
CA-2 Michael David Croddy LAW OFFICE OF CRODDY &
ASSOCIATES, P.C. FOR MICHAEL
DAVID CRODDY, DEBTORS'
ATTORNEY(S), FEE: \$4,221.70,
EXPENSES: \$0.00.
7-21-13 [[29](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Application for Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the motion for compensation. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

FEES REQUESTED

Michael D. Croddy, Counsel for Debtor, makes a Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is February 16, 2012 through February 28, 2013.

Description of Services for Which Fees are Requested

Counsel stated that he incurred fees and expenses in the amount of \$4,221.70

for work performed pre-Chapter 13 confirmation and that fees previously allowed are not sufficient to fully compensate him for services rendered. Services rendered include meeting with Debtors, document preparation and filing, and attendance at the 341 Meeting of Creditors.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Michael Croddy having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael Croddy is allowed the following fees and expenses as a professional of the Estate:

Michael Croddy, Counsel for the Estate
Applicant's Fees Allowed in the amount of \$4,221.70
Applicant's Expenses Allowed in the amount of \$0.00,

which amount may be paid Counsel by the Chapter 13 Trustee from unencumbered assets, after full credit applied for any retainers or prior amounts paid to Counsel.

18.	13-27957 -C-13	TRACIE RIGGS	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-18-13 [19]
	TSB-1 Pro Se		

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor (Pro Se) on July 18, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons: (1.) Debtor failed to appear at the 341 meeting held on July 11, 2013. (2.) Debtor failed to provide Trustee with a copy of a Federal Tax Return for the most recent pre-petition tax year as required under 11 U.S.C. § 521(e) (2) (A).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

19. [13-29360](#)-C-13 EDISON/SHARON FINCHER MOTION TO EXTEND
AUTOMATIC STAY
DPR-1 David P. Ritzinger 7-26-13 [[18](#)]

NOTE: CASE DISMISSED. Doc. #27: Order Dismissing Case for Failure to Timely File Document(s). Filed 8/2/2013.

Final Ruling: The case having previously been dismissed on August 2, 2013, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot.

20. [13-26569](#)-C-13 DAVID/JACQUELYN LONG MOTION TO CONFIRM PLAN
RDS-2 Richard D. Steffan 6-25-13 [[28](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Service and Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on June 25, 2013. 42 days' notice is required. This requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted. No appearance required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on April 9, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. [13-23372](#)-C-13 CHRISTOPHER/SARA VENTURA OBJECTION TO CONFIRMATION OF
PD-1 Pro Se PLAN BY CENTRAL MORTGAGE
COMPANY
7-11-13 [[54](#)]

NOTE: CASE DISMISSED. Doc. #66: Entry of Order of Dismissal. Order dismissing this case was entered on August 9, 2013.

Final Ruling: The case having previously been dismissed on August 9, 2013, the Objection is overruled as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot.

22. [13-27975](#)-C-13 VITALY/NATALIA KARAVAN
CAH-1 C. Anthony Hughes
Thru #23

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
7-10-13 [[15](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 10, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3533 Mission Ave, Carmichael, California. The Debtor seeks to value the property at a fair market value of \$213,276 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$233,161. Bank of America's second deed of trust secures a loan with a balance of approximately \$257,821. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 3533 Mission Ave, Carmichael, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$213,276 and is encumbered by senior liens securing claims which exceed the value of the Property.

23.	<u>13-27975</u> -C-13	VITALY/NATALIA KARAVAN	OBJECTION TO CONFIRMATION OF
	TSB-1 C.	Anthony Hughes	PLAN BY TRUSTEE DAVID P. CUSICK
			7-18-13 [<u>19</u>]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 18, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion. Debtors cannot afford to comply with the plan without the Motion to Value Collateral of Bank of America is granted. This matter is set for hearing today. Furthermore, the Trustee

opposes confirmation due to the fact that the debtors Schedule J indicates that property taxes and insurance are not included in the mortgage payment. Debtors will need an additional \$225.00 per month budgeted to these expenses. Debtors have a household of ten people according to Schedule I and the Trustee is not certain that Debtors can afford the plan payment.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

24.	13-25376 -C-13	CHRIS/KENDRA JOHNSON	OBJECTION TO CONFIRMATION OF
	PD-1 Pro Se		PLAN BY WELLS FARGO BANK, N.A.
			7-11-13 [37]

NOTE: CASE DISMISSED. Doc. #43: Civil Minutes show that Trustee's Motion to Dismiss the case for unreasonable delay was granted on 7/31/2013. Case dismissal filed on 8/9/2013.

Final Ruling: The case having previously been dismissed on August 9, 2013, the Objection is overruled moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot.

25. [12-35682](#)-C-13 CHARLES/TAMMY CARSTERSEN MOTION FOR COMPENSATION BY THE
SLF-6 Charles L. Hastings LAW OFFICE OF SUNTAG FOR DANA
Thru #26 A. SUNTAG, TRUSTEE'S
ATTORNEY(S), FEES: \$10,511.00,
EXPENSES: \$0.00
7-15-13 [[67](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Notice is not proper. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtors' Attorney, Office of the United States Trustee, and other interested parties on July 15, 2013. 28 days' notice is required. That requirement was met. However, the Chapter 13 Trustee, a party in interest does not appear to have notice of the motion as required under 11 U.S.C. § 330(a)(1) and was not served according to the Proof of Service.

Tentative Ruling: The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is that the Motion for Compensation is continued to allow for proper notice and service. No appearance required.

It is unclear whether the Chapter 13 Trustee was served with notice of the hearing on movant's Motion. 11 U.S.C. § 330(a)(1) requires that all parties in interest must given notice prior to a hearing on compensation. The Chapter 13 Trustee is a party in interest to this motion and, according to movant's Proof of Service, the Chapter 13 Trustee was not served with notice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Compensation filed by Law Office of Suntag having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Compensation is continued to [date].

26. [12-35682](#)-C-13 CHARLES/TAMMY CARSTERSEN MOTION FOR COMPENSATION FOR
SLF-7 Charles L. Hastings GARY FARRAR, CHAPTER 7
TRUSTEE(S), FEES: \$2,340.00,
EXPENSES: \$0.00
7-15-13 [[72](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Notice is not proper. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtors' Attorney, Office of the United States Trustee, and other interested parties on July 15, 2013. 28 days' notice is required. That requirement was met. However, the Chapter 13 Trustee, a party in interest does not appear to have notice of the motion as required under 11 U.S.C. § 330(a)(1) and was not served according to the Proof of Service.

Tentative Ruling: The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is that the Motion for Compensation is continued to allow for proper notice and service. No appearance required.

It is unclear whether the Chapter 13 Trustee was served with notice of the hearing on movant's Motion. 11 U.S.C. § 330(a)(1) requires that all parties in interest must given notice prior to a hearing on compensation. The Chapter 13 Trustee is a party in interest to this motion and, according to movant's Proof of Service, the Chapter 13 Trustee was not served with notice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Compensation filed by Gary Farrar having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Compensation is continued to [date].

Local Rule 3007-1(b)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 27, 2013. 44 days' notice is required. That requirement was met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1) and (d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 3007-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Objection to Proof of Claim number nine (9) of Bank of America, N.A. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number nine (9) on the court's official claims registry, asserts a \$49,288.77 claim. Debtors object to the priority status of Bank of America's claim and that the unsecured balance is not supported with sufficient evidence.

Debtors object to the status of Bank of America as a priority secured claimant. Debtors state that the property listed as Bank of America's secured interest was foreclosed upon on January 24, 2008 and is, therefore, satisfied. Debtors attached a copy of the Trustee's Deed Upon Sale as supporting evidence.

Debtors argue that Bank of America is not entitled to the presumption of validity under 3001(f) because it has not presented sufficient evidence to substantiate its status claim. Specifically, Debtors' argue that Bank of America included no evidence of the foreclosure sale in its claim and this is sufficient to deprive Bank of America of the presumption guaranteed in 3001(f).

Finally, Debtors argue that Bank of America's proof of the balance of the claim is not substantiated by any accounting and should, therefore, be denied.

Discussion

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting

substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Here, Debtors have not presented sufficient evidence to overcome the prima facie validity of Bank of America's proof of claim. First, Debtors objects to Bank of America's priority status; however, Bank of America's proof of claim does not demonstrate its intent to be considered a "priority," as that term is understood within the realm of bankruptcy distribution. Bank of America did not indicate on Claim 9 that it was seeking priority status. Furthermore, the Trustee's Deed Upon Sale that Debtors rely upon in arguing that Bank of America misrepresented its secured status is unauthorized and not accompanied by a declaration attesting to the validity of the document. Debtors have not presented sufficient evidence to call into question whether Bank of America is entitled to the 3001(f) presumption.

However, Bank of America's Claim 9 may be misleading if the property in question was foreclosed upon, leaving Bank of America with an unsecured deficiency claim instead of a secured claim. This remains unclear and Bank of America has not responded to Debtors' Objection.

Ultimately, Debtors failed to present sufficiently validated evidence to overcome the presumption of validity in favor of Bank of America's claim and, therefore, Debtors' Objection should be overruled.

Based on the evidence before the court, the creditor's claim is allowed in its entirety. The Objection to the Proof of Claim is overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Bank of America filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 9 of Bank of America is overruled.

28. [13-22384](#)-C-13 EVANGELINE MARAKAS MOTION TO CONFIRM PLAN
SCG-2 Sally C. Gonzales 6-26-13 [[97](#)]

CASE DISMISSED 7/16/13

Final Ruling: The case having previously been dismissed on July 16, 2013, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot.

29. 13-20293-C-13 KENNETH/SHIRLEY LAWRIE CONTINUED MOTION TO CONFIRM
DS-1 David Springfield PLAN
Thru #32 6-19-13 [[50](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on June 19, 2013. 42 days' notice is required. That requirement was met after the Motion was continued from July 23, 2013 to August 13, 2013 because it was first set on too short notice Doc. #61).

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee, having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Trustee objects to confirmation of Debtor's Amended Plan on

the following grounds: (1.) Debtors plan fails Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total \$35,000.00 and Debtors propose to pay 36% to unsecured creditors, which amounts to approximately \$22,326.00. According to Schedules A & B, non-exempt equity exists in the following: Napa Valley Timeshare (\$1,500), 2010 Harley Davidson Triglide Motorcycle (\$27,000), and 2002 Victory Deluxe Cruiser Motorcycle (\$7,000.00). (2.) The plan fails to provide for mortgage arrears from Citimorgages claim in the amount of \$2,008.49. Although under 11 U.S.C. § 1325(a)(5), treatment of all secured claims may not be required, failure to provide the treatment may indicate that Debtors cannot afford the plan payments because of additional debts, or could result in Creditor obtaining relief from stay. (3.) Debtors cannot make plan payments as required under 11 U.S.C. § 1325(a)(6). The plan calls for payments of \$500.00 for four months and then \$700.00 for thirty-two months; however, Debtors' Schedules I and J reflect disability insurance income as \$100.00 per month and a negative net income of \$932.12 per month. Debtors' Motion and Declaration state that Debtors have lost disability income of \$1,800.00 per month and suggest that Debtors have more expenses than income. Debtors' Declaration indicates that they have some savings; however, Trustee is concerned this is already exhausted and would be insufficient to meet plan payment requirements.

The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Service and Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on April 15, 2013. By the court's calculation, 23 days' notice was provided. 14 days' notice is required. The Motion was originally continued on May 8, 2013 to June 26, 2013. The Court then continued the Motion again until August 13, 2013 based on Debtors having set for hearing a Motion to confirm a plan, which was to be heard on July 26, 2013 but was continued until August 13, 2013.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Dismiss as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtors did not file an amended plan or set a confirmation hearing date after the court sustained Trustee's objection to plan on March 12, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtors offer no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtors' Opposition

Debtors oppose Trustee's Motion on the basis that an Amended Chapter 13 plan was filed on June 20, 2013, along with a Motion to Confirm the plan, set on July 23, 2013.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on June 20, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The Motion is dismissed as moot

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13

Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied as moot.

31.	13-20293 -C-13	KENNETH/SHIRLEY LAWRIE	CONTINUED MOTION TO DISGORGE
	TSB-3	David Springfield	ATTORNEY FEES
			5-15-13 [39]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 15, 2013. 28 days' notice is required. That requirement was met. The Motion was originally set to be heard on June 26, 2013. On June 21, 2013, the Court issued an Order to Show Cause as to why counsel Donald Wahlberg should not be disallowed any fees in connection with this bankruptcy case. The Order was set for August 13, 2013 and the Motion was, therefore, continued until August 13, 2013.

Tentative Ruling: None.

Discussion

The Chapter 13 Trustee objected to Attorney David Springfield's sharing of his total fees "50/50" with Attorney Donald Wahlberg. The basis of the Trustee's objection includes the failure of both attorneys to appear at two different noticed hearings, failure to file an amended plan, and failure to prosecute the case by not filing a motion to confirm the plan. The Motion also states that Debtors represented in court that they paid \$4,000.00 to Mr. Wahlberg, who informed Debtors he was not comfortable filing a Chapter 13 case, and referred Debtors to Mr. Springfield.

The Disclosure of Compensation certified that the total legal fees "rendered or to be rendered in contemplation of or in connection with the bankruptcy case is" \$3,500.00.

Opposition

Mr. Wahlberg and Mr. Springfield filed an opposition to the Trustee's Motion. The opposition cites to poor health and miscommunication as reasons for Counsel missing hearings and causing matters to not be properly calendared. The declarations of both Counsel state that the two have met with Debtors and have proposed to refund any and all fees, assist them to find other counsel, and apologized for inadequate representation. Debtors appear to want to retain Mr. Wahlberg and Mr. Springfield as counsel.

Order to Show Cause

On June 21, 2013, the Court issued an Order to Show Cause as to why Mr. Wahlberg should not be disallowed fees in connection with Debtors' case. The

hearing on the OSC was set for August 12, 2013 and, therefore, the hearing on Trustee's Motion to Disgorge Attorney's Fees was continued until the same date.

32. [13-20293](#)-C-13 KENNETH/SHIRLEY LAWRIE ORDER TO SHOW CAUSE
TSB-4 David Springfield 6-21-13 [[56](#)]

Tentative Ruling: None.

Discussion

On July 21, 2013, the Court issued an Order to Show Cause, ordering Mr. Wahlberg and Mr. Springfield to file, by July 15, 2013, documents responding to the OSC and declarations making required disclosures, pursuant to 11 U.S.C. § 329 and FRBP 2016(b).

Mr. Wahlberg's Response to the Order to Show Cause

Mr. Wahlberg provided a response to the Court's OSC. The response states that Debtors reached out to Mr. Wahlberg to file a bankruptcy case. Once Mr. Wahlberg determined it was in Debtors' best interest to file a Chapter 13 case he engaged Mr. Springfield as co-counsel on the matter. The response continues to describe how Mr. Wahlberg and Mr. Springfield met together with Debtors on multiple occasions and together joined in the preparation of the Chapter 13 filing. The response states that Debtors agreed to retain both Mr. Wahlberg and Mr. Springfield and provided a retainer in the amount of \$3,500.00. The check was made out to Mr. Wahlberg who then sent half of the funds to Mr. Springfield. The response states that the agreement called for an additional \$500.00 that was not paid by Debtors or incorporated into the Chapter 13 plan. Mr. Wahlberg requests that the Court does not order the refund of the additional \$500.00 as it was not received from Debtors. He asserts that he believes he is entitled to his \$1,750.00 share of the fees as he earned it and will continue to earn the fee as he sees the case through to completion.

Declaration of Mr. Wahlberg in Support of the Order to Show Cause

Mr. Wahlberg filed a declaration responding to specific inquiries of the OSC as follows: (1.) Mr. Wahlberg stated that he has handled fifteen (15) Chapter 7 bankruptcy cases since January 1, 2011, but the current case is his only Chapter 13. In the Chapter 7 cases, Mr. Wahlberg was the only attorney involved. (2.) The legal services provided and to be provided include reviewing and analyzing client financial circumstances, discussing client options, preparation of Chapter 13 petition and Plan, attend hearings in connection with the case, and communication with necessary parties to the case. (3.) Mr. Springfield and Mr. Wahlberg share the legal services described above. There was no agreement on division of services except for an agreement that Mr. Springfield would be lead Counsel because of his

superior experience handling Chapter 13 matters. (4.) Mr. Wahlberg has no funds in his client trust account on behalf of Debtors.

Mr. Springfield's Response to the Order to Show Cause

Mr. Springfield provided a response to the Court's OSC. The response states that there is no undisclosed compensation because the fees received were not \$4,000.00 but \$3,500.00 as truthfully and accurately disclosed. Furthermore, the response states that Mr. Wahlberg and Mr. Springfield were both actively working on the case and have both provided valuable legal services. Mr. Springfield cites to his attached Declaration for further support and states that declarations from Debtors would be included; however, they are currently on a short trip and unavailable.

Declaration of Mr. Springfield in Support of the Order to Show Cause

Mr. Springfield filed a declaration responding to specific inquiries of the OSC as follows: (1.) Although the retainer agreement reflects that \$4,000.00 was required to be paid for services, only \$3,500.00 was actually paid by Debtors and divided evenly between co-Counsel. Debtors paid separately for the filing fee and there was no undisclosed \$500.00 received at any time. (2.) Mr. Springfield states that fees are reasonable given that time spent preparing a Chapter 13 exceeds that required for preparing a Chapter 7 petition. (3.) Legal services provided and to be provided are to assist with all aspects of a Chapter 13 case through plan confirmation. The services include full and complete review and preparation of pleadings and petitions and schedules, attending the 341 hearing, working on the plan and/or amendments, and any other work as needed. (4.) With Mr. Wahlberg, Mr. Springfield has provided and conducted a thorough inventory of Debtors finances, conducted a credit check, advised Debtors of options in bankruptcy court, and held 5-6 meetings with Debtors prior to filing with Mr. Wahlberg. Mr. Springfield stated that Mr. Wahlberg assisted him with all forms and schedules and helped obtain necessary documents, conduct multiple reviews for accuracy, and obtain signatures. (5.) Mr. Springfield stated that the agreement he had with Mr. Wahlberg was to jointly work on all the forms and jointly meet with Debtors. He asserts that Mr. Wahlberg's fee is not a "finder's fee" and that it is a fee for services and time put into the case.

Standard

Under 11 U.S.C. § 329, if compensation exceeds the reasonable amount for the services provided, the court may cancel the agreement and order the return of any excessive payments. Furthermore, all attorneys are required to truthfully and accurately disclose all compensation paid or promised to be paid to the attorneys for the debtor. FRPB 2016(b).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 18, 2013. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The Objection is dismissed as moot and confirmation is denied. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on July 24, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation of the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 29, 2013. 14 days' notice is required. That requirement is met.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3109 County Road 88, Dunnigan, California. The Debtor seeks to value the property at a fair market value of \$190,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$205,313.90. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$32,549.17. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 3109 County Road 88, Dunnigan, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$190,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

35.	13-28798 -C-13	PHONDARA SANCHEZ	MOTION TO VALUE COLLATERAL OF
	SJS-1	Scott J. Sagaria	BANK OF AMERICA, N.A.
			7-11-13 [16]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 11, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9761 Mountain Vista Circle, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$311,208 as of the petition filing date. As the

owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$324,211. Bank of America's second deed of trust secures a loan with a balance of approximately \$124,989. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America secured by a second deed of trust recorded against the real property commonly known as 9761 Mountain Vista Circle, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$311,208 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 10, 2013. 14 days' notice is required. That requirement was met. Matter was continued to August 13, 2013 for the court to hear the Motion to Value Collateral that forms the basis for the Trustee's Objection.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on the Motion to Value Collateral of Real Time Resolutions that is set for hearing on August 8, 2013.

The Court will be hearing the Motion to Value Collateral of Real Time Resolutions today and the Court's final ruling is to grant the Motion. Therefore, the Trustee's Objection is overruled as the plan does comply with with 11 U.S.C. §§ 1322 and 1325(a).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled and the proposed Chapter 13 plan is confirmed.